ration in the books of the company of the profits from the two sources. *Haddock* v. *D. L. & W. R. R.* (1890) 4 I. C. C. Rep. 296; *Coxe Bros. & Co.* v. *Lehigh Valley R. R.* (1891) 4 I. C. C. Rep. 535. In the principal case the applicability of the clause to carriers of the third class, those simply dealing in coal, was in issue. The court stated the question as follows, "Has a carrier engaged in inter-State commerce the power to contract to sell, and transport, in completion of the contract, the commodity sold, when the price stipulated in the contract does not pay the cost of purchase, the cost of delivery, and the published freight rates?" The court answered the question in the negative, holding the prohibition "applicable to every method of dealing by a carrier by which the forbidden result could be brought about."

The decision of the court commends itself strongly as a proper interpretation of the clause both from the plain construction of the language and the general remedial purpose of the act. *Grain Rates of C. & G. W. R. R.* (1897) 7 I. C. C. Rep. 33. The exemption of the carrier from the rule when carrying his own goods would provide a means for building up a monopoly far more effective than the total abrogation of the act itself would afford. The practical result of the decision of the principal case is that the carrier is not permitted to say that the loss falls on him as a dealer and not as a carrier, and while such ruling puts the carrier in a worse position than the independent dealer who may sell at any price, this being the result of proper regulation, is perfectly constitutional and, what is more, highly desirable from the economic point of view. *Atty. Gen.* v. *Great Northern Ry.* (1860) 29 Law J. (N. S. Eq.) 794.

ADMINISTRATION UPON THE ESTATES OF ABSENTEES.—The history of the law as to administration of the estates of persons absent and unheard of is bound up with theories of the presumption of death. Although the early common law recognized no definite period of absence as raising such a presumption, Swinb. Pt. 6, s. 13, later decisions and statutes, following the analogy of the Statute of Bigamy, 1 Jac. 1, c. 2, and Stat. 19 Car. II, c. 6, relating to leases on lives, as recognized in *Doe* v. *Jesson*, (1805) 6 East 80, have developed the doctrine that continued and unaccounted absence for seven years will be sufficient. Wig. Evid. §2531, *n.* 3. On this basis courts have granted administration upon the property of absentees by virtue of their probate jurisdiction. W'ms. Exec., 7 Am. ed., Vol. I, p. 673, *n.* But since the death of the person is a jurisdictional fact, its disproof by the appearance of the deceased, or other evidence should avoid the entire proceedings. A much noted case is said to stand out against this result. *Roderigas* v. *Savings Institution* (1875) 63 N. Y. 460. It was there held that if the surrogate had found the absentee's death as a fact and had granted administration thereon, his jurisdiction was not open to collateral attack, and the administration was valid until set aside. But the general rule is that probate jurisdiction, being special and limited, may in

such a case be attacked collaterally, *First Nat. Bk.* v. *Balcom* (1868) 35 Conn. 351, 359; *Roderigas* v. *East River Sav. Inst.* (1879) 76 N. Y. 316, as well as directly. *Stephenson* v. *Superior Court* (1882) 62 Cal. 60. Accordingly, the view, first expressed by Buller, J., in *Allen* v. *Dundas* (1789) 3 T. R. 125, that administration upon the estate of a living person is an absolute nullity seems well founded in so far as it applies to administration under ordinary probate jurisdiction. *Jochumsen* v. *Suffolk Sav. Bk.* (1861) 3 Allen 87; *Devlin* v. *Commonwealth* (1882) 101 Pa. St. 273; *Scott* v. *McNeal* (1894) 154 U. S. 34.

It does not follow, however, that the State is without power to provide such administration. The power was acknowledged in the Roman Law, Donat. liv. 2, tit. 2, sec. 1, no. 13, and exercised to some extent in the systems of the continental States. De Saint Joseph Concordance entre les Codes Civils etrangers et le Code Napoleon, Vol. 1, p. 11. In other ways our own law has recognized, as a necessary attribute of government, the right to exercise certain control over the property of absentees, as extending not only to the supervision of property, but to the disposal of it. For instance the State may provide remedial process for the collection of taxes, *New Orleans* v. *Stimpel* (1899) 175 U. S. 309, or for attachment and execution sale. *Harris* v. *Balk* (1905) 198 U S. 215. The action of those States which have provided systems for the administration of the estates of absent persons, cannot, therefore, be attacked on the ground of a lack of inherent right on the part of the State. *Barton* v. *Kimmerly* (Ind. 1905) 76 N. E. 250.

Such a right must, of course, be exercised within the provisions of the Constitution. The State has no power to assume such control of an absentee's property as to amount to deprivation "without due process of law." The question of the extent of the power in this connection has been raised in a recent case in the Supreme Court of the United States, which upheld a Pennsylvania statute giving the Orphans' Court of that State jurisdiction upon due notice, to grant administration after an unexplained absence of more than seven years. *Cunnius* v. *Reading School Dist.* (1905) 198 U. S. 458. It seems clear that under the fourteenth amendment such a statute must contain reasonable provisions as to the period of absence, as well as for notice to the absentee. *Pennoyer* v. *Neff* (1877) 95 U. S. 714, 733; *Selden's Ex'r.* v. *Kennedy* (Va. 1906) 52 S. E. 635, and for safeguarding his interests in case of his possible return. *Lavin* v. *Savings Bank* (1880) 18 Blatchf. 1, 24. But if these requirements are satisfied, the statute should not be invalidated by the fact that the power is given to a court which ordinarily has jurisdiction over deceased persons, or that the period after which it may act is said to create a presumption of death, or even that the common law presumptive period is implied. The important question is that of the legislature's intention. *Scott* v. *McNeal*, supra, p. 47. It need only appear that by a grant of jurisdiction to a court the State has meant to exercise its power of control over the property of absentees, and has done so within the proper limits.

On this ground it seems possible to support the result reached in the much criticised case of *Roderigas* v. *Savings Institution*, supra, under the court's view that by providing that the surrogate's inquiry into the fact of death should be conclusive, a jurisdiction over persons adjudged deceased, in addition to that over persons actually deceased, has been conferred. Once the inherent power of the State to grant such jurisdiction is admitted, the adjudication of its highest court as to the extent of jurisdiction granted should be conclusive. *Leffingwell* v. *Warren* (1862) 2 Black 599, 603. The case cannot, therefore, be condemned as an unwarranted extension of the State's power to grant administration upon the property of absentees, though it would seem to reach the limit of statutory interpretation in this connection. *D'Arusement* v. *Jones* (1880) 4 Lea 251.

Effect of Probate of a Will in a Foreign Jurisdiction.— In both England and the United States to-day the probate of a will is purely a matter of statutory law, whereby certain tribunals are given jurisdiction over wills of both personalty and realty. The jurisdiction of these courts is primarily determined by the domicil of the testator at the time of his death. *Enohin* v. *Wylie* (1862) 10 H. L. Cases 1. By statute also, wills probated in one State are admitted to probate in another State upon the presentation of an exemplified copy thereof. This general rule is subject to certain exceptions, one of which has been presented recently in California. A resident of that State, while sojourning in New Hampshire, executed a will in accordance with the laws of both States, and died owning lands situated in both places. The will was probated in New Hampshire and an exemplified copy was presented to the proper court in California asking for a probate there. This was refused, the court holding that it was not entitled to admission as a foreign will, but must be probated originally in the California court. *In re Clark's Estate* (1905) 82 Pac. 760.

Since there was land within New Hampshire belonging to the estate, the court of that State had jurisdiction to probate the will even though the testator was a non-resident both when he made his will and at the time of his death. New Hamp. 1891 P. S. c. 182 § 8. As the probate of a will is generally regarded as a judgment in rem, it was contended by the petitioner that the constitutional guaranty of full faith and credit required the recognition of the decree of the New Hampshire court for the purposes of secondary and ancillary administration in California. Cf. *Willett's Appeal* (1882) 50 Conn. 330. Although there were several prior decisions in the State holding that in the case of indirect or collateral proceedings, the fact that the will of a resident had first been admitted to probate in another State constituted no ground for refusing to receive it as a foreign will, now that the question came up on direct appeal, the California court manifested a determination to part with none of their rights of primary jurisdiction in this respect.

The function of a probate court is to determine whether the